

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 22, 1999

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC990020

Ex Parte, In Re
Amendments to Securities
Act Rules

ORDER ADOPTING AMENDED RULES

On May 4, 1999, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Securities Act Rules ("Rules") and forms to all issuer agents, broker dealers and investment advisors pending registration or registered under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia, and to other interested parties. Notice of the proposed amendments was also published in several newspapers in general circulation throughout Virginia, and in the "Virginia Register of Regulations" on May 10, 1999. The notices described the proposed amendments, and afforded interested parties an opportunity to file written comments or requests for a hearing.

Written comments were filed by the Securities Industry Association ("SIA"), the Investment Company Institute, American Express Financial Advisors, Inc., the Greater Richmond Chapter

of the International Association for Financial Planning and DMR Investment Counsel. Only SIA requested a hearing. After considering the comments received, the Division modified the proposed amendments in various respects, and SIA withdrew its request for a hearing.

The Commission, upon consideration of the proposed amendments as modified, the written comments filed, the recommendations of the Division, and the record in this case, finds that the proposed modified amendments should be adopted. Accordingly,

IT IS ORDERED THAT:

(1) The evidences of mailing and publication of notice of the proposed Rules and forms amendments shall be filed in and made part of the record in this case.

(2) The proposed modified Rules and forms amendments are adopted effective July 1, 1999. A copy of the modified Rules and forms amendments is attached to and made part of this order.

(3) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

SECURITIES ACT REGULATIONS

[21 VAC 5-10-20. Classification of Regulatory Standards.

Regulations are regulatory standards adopted and promulgated and shall be considered the highest level of policy applied by the Commission.

Forms are ~~regulatory standards~~ prescribed or adopted for the purpose of implementing the Virginia Securities Act ~~by prescribing initial basic requirements for completing various applications and reports filed with the Commission. The forms required by the Commission are set forth in 21 VAC 5-85-10 and have the same force and effect as regulations. When so~~ prescribed or adopted, use of the forms is mandatory.

Statements made orally or in writing by personnel of the Division of Securities and Retail Franchising in response to inquiries or otherwise, and not specifically identified and promulgated as regulations shall not be considered regulatory standards of the Commission and shall not be considered binding upon the Commission in connection with specific decisions undertaken by the Commission thereafter. The Commission may refuse to answer any question based upon a hypothetical situation.]

21 VAC 5-10-40. Definitions.

As used in the Securities Act, the following regulations and forms pertaining to securities, instructions and orders of the Commission, the following meanings shall apply:

“*Act*” means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

“*Applicant*” means a person on whose behalf an application for registration or a registration statement is filed.

“*Application*” means all information required by the forms prescribed by the Commission as well as any additional information required by the Commission and any required fees.

SECURITIES ACT REGULATIONS

“Bank Holding Company Act of 1956” (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

“Boiler room [tactics]” ~~[means mean an enterprise in which two or more persons engage in communications with members of the public using telephones at one or more locations in a common scheme or enterprise to peddle securities of dubious or risky value operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesman or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives].~~

“Commission” means State Corporation Commission.

“Federal covered advisor” means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

“Investment Advisers Act of 1940” (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, *“investment advisor representative”* as applied to a federal covered advisor only includes an individual who has a “place of business” (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an “investment advisor representative” as that term is defined in rules or regulations promulgated by the SEC; or
2. a. Is not a “supervised person” as that term is defined in the Investment Advisers Act of 1940, and

SECURITIES ACT REGULATIONS

- b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

“Investment Company Act of 1940” (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

“NASAA” means the North American Securities Administrators Association, Inc.

“NASD” means the National Association of Securities Dealers, Inc.

“Notice” or *“notice filing”* means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the Commission and any required fee.

“Registrant” means an applicant for whom a registration or registration statement has been granted or declared effective by the Commission.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act of 1933” (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

“Securities Exchange Act of 1934” (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

[21 VAC 5-20-10. Application for registration as a broker-dealer.]

- A. Application for registration as a broker-dealer shall be filed with the Commission at its Division of Securities and Retail Franchising and/or such other entity designated by the Commission on and in full compliance with forms prescribed by the Commission and shall include all information required by such forms.
- B. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer unless the following executed forms, fee and information are submitted to the Commission:

SECURITIES ACT REGULATIONS

1. Form BD (~~see 21 VAC 5-85-10~~).
 2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 pursuant to § 13.1-505 F of the Act.
 3. A signed and executed Agreement for Inspection of Records form.
 4. A copy of the firm's written supervisory procedures. Sole proprietorships are excluded.
 5. Financial statements required by 21 VAC 5-20-80.
 6. Evidence of exam requirements for principals required by 21 VAC 5-20-70.
 7. Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.]

21 VAC 5-20-70. Examinations/qualifications.

- A. Broker-dealers registered pursuant to § 15 of the Securities Exchange Act of 1934 (15 USC § 78o).
1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of ~~a minimum~~ passing ~~grade of 70% on~~ : (i) the Uniform Securities Agent State Law Examination - Series 63 (~~USASLE Series 63~~); (ii) the Uniform Combined State Law Examination - Series 66 and the General Securities Representative Examination, Series 7; or (iii) ~~on~~ a similar examination in general use by securities administrators which, after reasonable

SECURITIES ACT REGULATIONS

notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.

2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection A, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or ~~on~~ a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this section is applicable only to principals of broker- dealers that are, or intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

- B. Broker-dealers not registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of ~~a minimum passing grade of 70% on:~~

SECURITIES ACT REGULATIONS

- a. The Uniform Securities Agent State Law Examination - Series 63 (~~USASLE Series 63~~); ; the Uniform Combined State Law Examination - Series 66; and the General Securities Representative Examination, Series 7; ; or ~~on~~ a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates; and
 - b. Any additional securities-related examination(s) that the Commission deems appropriate in light of the business in which the applicant proposes to engage.
2. Subsection B of this section is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

21 VAC 5-20-90. Application for registration as a broker-dealer agent.

A. Application for registration as a NASD member broker-dealer agent shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the regulations prescribed by the Commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 [~~(see 21 VAC 5-85-10)~~].

SECURITIES ACT REGULATIONS

2. The statutory fee in the amount of \$30. The check must be made payable to the NASD.
 3. [~~Provide evidence~~ Evidence] in the form of a NASD exam report of ~~obtaining a minimum passing grade of 70% on~~ : (i) the Uniform Securities Agent State Law ~~Exam~~ Examination, "USASLE," Series 63 ~~exam~~; ; (ii) the Uniform Combined State Law ~~Exam~~ Examination, Series 66 ~~exam~~; and the General Securities Representative Examination, Series 7; ; or ~~on~~ (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 4. Any other information the Commission may require.
- B. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the Commission.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4 [~~see 21 VAC 5-85-10~~].
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
3. [~~Provide evidence~~ Evidence] in the form of a NASD exam report of ~~obtaining a minimum passing grade of 70% on~~ : (i) the Uniform Securities Agent State Law ~~Exam~~ Examination, "USASLE," Series 63 ~~exam~~; ; (ii) the Uniform Combined State Law Exam, Series 66 ~~exam~~; and the General Securities Representative Examination, Series 7; or ~~on~~ (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by

SECURITIES ACT REGULATIONS

the Commission, the Director of the Division of Securities and Retail Franchising designates.

4. Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-150. Examination/qualification.

An individual applying for registration as a broker-dealer agent shall be required to show evidence of passing: (i) the Uniform Securities Agent State Law Examination (USASLE-Series 63); ;(ii) the Uniform Combined State Law Examination, Series 66 exam, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

21 VAC 5-20-160. Application for registration as an agent of the issuer.

- A. Application for registration as an agent of the issuer shall be filed on and in compliance with all requirements and forms prescribed by the Commission.
- B. An application shall be deemed incomplete for purposes of applying for registration as an agent of the issuer unless the following executed forms, fee and information are submitted:

SECURITIES ACT REGULATIONS

1. Form U-4.
 2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.
 3. Completed Agreement for Inspection of Records Form.
 4. ~~[Provide evidence]~~ Evidence in the form of a NASD exam report of ~~obtaining a minimum passing grade of 70% on~~ : (i) the Uniform Securities Agent State Law Exam Examination, "USASLE", Series 63 exam; (ii) the Uniform Combined State Law Exam Examination, Series 66 exam; and the General Securities Representative Examination, Series 7; or ~~on~~ (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 5. Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-220. Examination/qualification; waiver of examination requirement.

- A. ~~An~~ Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination,

SECURITIES ACT REGULATIONS

~~(USASLE-Series 63);~~ ;(ii) the Uniform Combined State Law Examination, Series 66 exam, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates with a minimum grade of 70%.

B. The Commission may waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer that is a limited partnership or a manager of an issuer that is a limited liability company who:

1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and
2. Agrees to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶3676).

21 VAC 5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment

SECURITIES ACT REGULATIONS

objectives, financial situation and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
7. Fail to segregate customers' free securities or securities held in safekeeping;
8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;
9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;
10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

SECURITIES ACT REGULATIONS

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1- 514 B 6 of the Act;
12.
 - a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
 - b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee.
13. Offer to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

SECURITIES ACT REGULATIONS

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:
 - a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
 - b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;
 - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
16. Guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;
17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security

SECURITIES ACT REGULATIONS

unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the Commission, a balance sheet of the issuer as of a date within 18 months of the offer and/or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subsection shall comply with the provisions of § 13.1-507 of the Act;
20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any

SECURITIES ACT REGULATIONS

contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; ~~or~~
 22. Fail or refuse to furnish a customer, upon reasonable request, information to which such customer is entitled, or to respond to a formal written request or complaint; or
 23. Fail to [disclose in a timely manner (so that clients and prospective clients may take steps to protect their interests), broker-dealer services and relationships, or proposed broker-dealer services and relationships, which may be affected by year 2000 computer or equipment problems, if the broker-dealer has not substantially addressed these problems, or is uncertain of its ability to resolve these problems make a disclosure in a timely manner to clients or perspective clients, that the broker-dealer has not substantially addressed year 2000 computer or equipment problems, or is substantially uncertain of its ability to resolve these problems].
- B. No agent shall:
1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

SECURITIES ACT REGULATIONS

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
 3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;
 4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
 5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or
 6. Engage in conduct specified in subdivisions A 2, 3, 4, 5, 6, 10, 15, 16, 17, or 18 of this section.
- C. Failure to comply with any of the applicable continuing education requirements set forth in any of the following[, if such failure has resulted in an agent's denial, suspension or revocation or a license, registration or membership with a self regulatory organization.] shall be deemed a demonstration of a lack of business knowledge by [a broker-dealer or an] agent insofar as such business knowledge is required for registration by § 13.1-505 A 3 of the Act [and is hereby required for renewal of registration].
1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;

SECURITIES ACT REGULATIONS

2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;
3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;
4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;
5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;
6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;
7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or
8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995;

Each or all of the education requirements standards listed above may be changed [~~and compliance with such requirements will be deemed to demonstrate sufficient business knowledge if such changes do~~ by each respective entity and if so changed will become a requirement if such change does] not materially reduce the educational requirements expressed above or [~~otherwise materially reduce the investor protection contemplated by this regulation~~ reduce the investor protection provided by such requirements].

- D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes such security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer,

SECURITIES ACT REGULATIONS

without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

[E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers and/or sales agents.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.
2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.
3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would effect the value of the security.
4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.
5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees, or (ii) parking or withholding securities.

SECURITIES ACT REGULATIONS

6. Although nothing in this subsection precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:

 - a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.
 - b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; provided that subdivision 6 shall apply only if the firm is a market maker at the time of the solicitation.
 - c. Conducting sales contests in a particular security.
 - d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.
 - e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.
 - f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.
7. Effecting any transaction in, or inducing the purchase or sale of any security by means or any manipulative, deceptive or other fraudulent device or contrivance

SECURITIES ACT REGULATIONS

including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.
9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.
10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.
11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; provided that, this subdivision shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.
12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.
13. In connection with the solicitation of a purchase or sale of a designated security:
 - a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar

SECURITIES ACT REGULATIONS

amounts at the time of solicitation and on the trade confirmation documents, or

b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:

- (1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; provided, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.
- (2) Transactions that are not recommended by the broker-dealer or agent.
- (3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the

SECURITIES ACT REGULATIONS

designated security that is the subject of the transaction in the immediately preceding 12 months.

- (4) Any transaction or transactions that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section the term "designated security" means any equity security other than a security:

- (1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;
- (2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;
- (3) Issued by an investment company registered under the Investment Company Act of 1940;
- (4) That is a put option or call option issued by The Options Clearing Corporation; or
- (5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated less than 15 months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

SECURITIES ACT REGULATIONS

- (a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or
- (b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE--READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

- Q. What is meant by the BID and ASK price and the spread?
- A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation.

SECURITIES ACT REGULATIONS

The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares x \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares x \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some

SECURITIES ACT REGULATIONS

instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.]

€[EG]. Engaging in or having engaged in conduct specified in subsection A [, B, C, D,] or [B E] of this section, or other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

~~[21 VAC 5-20-285. — Fraudulent or deceitful practices of broker-dealers and sales agents; customer notice requirements.~~

A. — The purpose of this section is to identify practices in the securities business which are generally associated with schemes to manipulate. A broker-dealer or agent who engages in one or more of the following practices shall be deemed to have engaged in a "transaction, practice or course of business which operates or would operate as a fraud or deceit" under § 13.1-502 of the Act. This section is not intended to be all inclusive, and thus, transactions or practices not enumerated herein may also be deemed fraudulent.

1. — Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

SECURITIES ACT REGULATIONS

- ~~2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.~~
- ~~3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker dealer or agent is in possession of material, non public information which would effect the value of the security.~~
- ~~4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.~~
- ~~5. Failing to make a bona fide public offering of all the securities allotted to a broker dealer for distribution by, among other things, (i) transferring securities to a customer, another broker dealer or a fictitious account with the understanding that those securities will be returned to the broker dealer or its nominees or (ii) parking or withholding securities.~~
- ~~6. Although nothing in this section precludes application of the general anti fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non NASDAQ equity securities:~~
 - ~~a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities~~

SECURITIES ACT REGULATIONS

- ~~transaction to be paid to the agent including commissions, sales charges, or concessions.~~
- b. ~~In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; provided that subdivision 6 shall apply only if the firm is a market maker at the time of the solicitation.~~
- e. ~~Conducting sales contests in a particular security.~~
- d. ~~After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.~~
- e. ~~Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.~~
- f. ~~Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.~~
7. ~~Effecting any transaction in, or inducing the purchase or sale of any security by means or any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.~~
8. ~~Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.~~
9. ~~In connection with the solicitation of a sale or purchase of an OTC-unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or~~

SECURITIES ACT REGULATIONS

~~the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.~~

~~10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.~~

~~11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; provided that, this subdivision shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.~~

~~12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self regulatory organization approved by the SEC.]~~

~~13. In connection with the solicitation of a purchase or sale of a designated security:~~

~~a. Failing to disclose to the customer the bid and ask price, at which the broker dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents, or~~

~~b. Failing to include with the confirmation, the notice disclosure contained in subsection B of this section, except the following shall be exempt from this requirement:~~

SECURITIES ACT REGULATIONS

- ~~(1.) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; provided, that if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.~~
- ~~(2.) Transactions that are not recommended by the broker dealer or agent.~~
- ~~(3.) Transactions by a broker dealer: (i) whose commissions, commission equivalents, and mark ups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission equivalents, and mark ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months.~~
- ~~(4.) Any transaction or transactions that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.~~

SECURITIES ACT REGULATIONS

~~e. For purposes of this section the term "designated security" means any equity security other than a security:~~

~~(1.) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3.1 under the Securities Exchange Act of 1934;~~

~~(2.) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;~~

~~(3.) Issued by an investment company registered under the Investment Company Act of 1940;~~

~~(4.) That is a put option or call option issued by The Options Clearing Corporation; or~~

~~(5.) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated less than 15 months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and~~

~~(a.) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or~~

SECURITIES ACT REGULATIONS

~~(b.) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.~~

B. ~~Customer notice requirements follow:~~

IMPORTANT CUSTOMER NOTICE--READ CAREFULLY

~~You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.~~

Q. ~~What is meant by the BID and ASK price and the spread?~~

A. ~~The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.~~

Q. ~~How can I follow the price of my security?~~

A. ~~For the most part, you are dependent on broker dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer to dealer~~

SECURITIES ACT REGULATIONS

~~transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).~~

~~Q. — How does the spread relate to my investments?~~

~~A. — The spread represents the profit made by your broker dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.~~

~~Q. — How do I compute the spread?~~

~~A. — If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares x \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker dealer for \$50 (100 shares x \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.~~

~~Q. — Can I sell at any time?~~

~~A. — Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker dealers who buy or sell them on a regular basis.~~

~~Q. — Why did I receive this notice?~~

~~A. — The laws of some states require your broker dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.~~

~~Q. — Where do I go if I have a problem?~~

~~A. — If you cannot work the problem out with your broker dealer, you may contact the Virginia State Corporation Commission for the securities commissioner in the~~

SECURITIES ACT REGULATIONS

~~state in which you reside], the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.]~~

[21 VAC 5-20-300. Net worth.

- A. For broker-dealers not subject to the Securities Exchange Act of 1934, the term "net worth" as used in § 13.1-505 B of the Act shall be computed as total assets minus total liabilities, excluding liabilities of the broker-dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement as defined in Appendix D of Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1d).
- B. If a broker-dealer applicant or registrant not subject to the Securities Exchange Act of 1934 cannot demonstrate and maintain a net worth in excess of \$25,000, the Commission shall require the filing of a surety bond on the form prescribed ~~in 21 VAC 5-85-10~~. The amount of the penal sum of the surety bond can be determined according to the following table:

<u>NET WORTH</u> (Rounded to nearest \$1)	<u>PENALTY AMOUNT OF SURETY BOND</u>
Less than \$ 5,000	\$ 25,000
5,001 - 10,000	20,000
10,001 - 15,000	15,000
15,001 - 20,000	10,000
20,001 - 25,000	5,000

- C. If the net worth of a broker-dealer registrant not subject to the Securities Exchange Act of 1934 plus the penal sum of its surety bond drops below \$25,000, the registrant must so notify the Division of Securities and Retail Franchising in writing within three business day and immediately take action to establish a net worth in excess of \$25,000.]

21 VAC 5-20-330 Model rules for sales of securities at financial institutions.

SECURITIES ACT REGULATIONS

A. This section applies exclusively to broker-dealer services conducted by broker-dealers and their agents on the premises of a financial institution where retail deposits are taken.

This section does not alter or abrogate a broker-dealer's obligation to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. This section does not apply to broker-dealer services provided to non-retail customers.

B. For purposes of this section, the following terms have the meanings indicated:

1. "Financial institution" means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in Virginia.
2. "Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution pursuant to which the broker-dealer conducts broker-dealer services on the premises of such financial institution where retail deposits are taken.
3. "Broker-dealer services" means the investment banking or securities business as defined in paragraph (p) of Article I of the By-Laws of the NASD.

C. Standards for broker-dealer conduct.

No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer and its agents complies initially and continuously with the following requirements:

1. Setting.
Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate

SECURITIES ACT REGULATIONS

areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.

2. Networking arrangements and program management.

Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements must provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, unless prohibited by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. Management of the broker-dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and responsibilities of all parties, including those of financial institution personnel.

3. Customer disclosure and written acknowledgment.

a. At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer or its agents shall:

- (1) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer:

SECURITIES ACT REGULATIONS

- (a) Are not insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA").
 - (b) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and
 - (c) Are subject to investment risks, including possible loss of principal invested.
 - (2) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subdivision C 3 a 1.
 - (b) If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral explanations of the coverage must also be provided to the customers when such representations are first made.
4. Communications with the public.
- a. All of the broker-dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the broker-dealer.
 - b. Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer or its agents, or that are distributed by the broker-dealer or its agents on the premises of a financial institution, must disclose that securities products: are not insured by the FDIC; are not deposits or other

SECURITIES ACT REGULATIONS

obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter logo format described in subdivision C 4 d may be used to provide these disclosures.

c. Recommendations by a broker-dealer or its agents concerning nondeposit investment products with a name similar to that of a financial institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

d. The following shorter logo format disclosures may be used by a broker-dealer or its agents in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of subdivision C 4 b provided that such disclosures are displayed in a conspicuous manner:

(1) Not FDIC insured

(2) No bank guarantee

(3) May lose value

e. As long as the omission of the disclosures required by subdivision C 4 b would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, such disclosures are not required with respect to messages contained in:

(1) Radio broadcasts of 30 seconds or less;

(2) Electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but

SECURITIES ACT REGULATIONS

excluding messages contained in such media as television, on-line computer services, or ATMs; and

- (3) Signs, such as banners and posters, when used only as location indicators.

5. Notification of termination.

The broker-dealer must promptly notify the financial institution if any agent of the broker dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

21 VAC 5-30-40. Requirements for registrations filed pursuant to §§ 13.1-508 and 13.1-510 of the Code of Virginia.

- A. ~~The~~Except as provided in subsection B of 21 VAC 5-30-90, the balance sheet required by §§ 13.1-508 and 13.1-510 of the ~~Code of Virginia Act~~ must be examined and reported upon with an opinion expressed by an independent accountant and shall include the information described in 21 VAC 5-30-10 in the definition of "certified financial statements." (See 21 VAC 5-30-40 B and C).
- B. In lieu of the financial information required by ~~these Code sections~~ §§ 13.1-508 and 13.1-510 of the Act, the registration statement may contain certified financial statements for the issuer's and/or any predecessor's three most recent fiscal or calendar years preceding the date of filing the registration statement. If the issuer's or any predecessor's existence is less than three years, then the registration statement may contain certified financial statements for the issuer's or any predecessor's most recent fiscal year preceding the date of filing the registration statement.
- C. If the certified financial statements ~~as outlined by~~ described in subsection B are as of a date in excess of four months prior to the filing of the registration statement then an

SECURITIES ACT REGULATIONS

unaudited balance sheet (as of a date within four months prior to the filing of the registration statement together with a profit and loss statement and analysis of surplus for the period between the close of the latest fiscal year and the date of the balance sheet) must be filed in addition to the certified financial statements.

21 VAC 5-30-90 **Small corporate offering registration.**

- A. A registration statement on Form U-7 (Small Corporate Offering Registration Form), as amended by NASAA on April 28, 1996, may be used to register securities by qualification under § 13.1-510 of the Act, provided the conditions set forth in subsection B of this section, and the instructions to Form U-7, are satisfied.
- B. The financial statements included in the application for registration shall be those required under the instructions to the Form U-7. Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:
1. The issuer shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public meetings, “cold call” telephone solicitation, or any other method directed toward the public;

SECURITIES ACT REGULATIONS

2. The issuer has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;
3. The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000; and
4. The amount of the present offering does not exceed \$1,000,000.

21 VAC 5-40-50. Foreign issuer.

In accordance with § 13.1-514 A 13 of the Act, any equity or debt security issued by an issuer organized under the laws of any foreign country is exempted from the securities registration requirements of the Act provided the following criteria are met:

1. With respect to an equity security, the security ~~is included on the List of Foreign Margin Stocks ("the list") periodically published~~ meets the marginability requirements of regulation T adopted by the Board of Governors of the Federal Reserve System ("the Board") or is an American Depositary Receipt ("ADR") representing such a security ~~whether or not the ADR is included on the list;~~ and
2. With respect to a debt security, the security meets the marginability requirements of regulation T adopted by the Board.

SECURITIES ACT REGULATIONS

21 VAC 5-40-100. Domestic issuer limited transactional exemption.

A. In accordance with § 13.1-514 B 7 (b) of the Act, an offer or sale by the issuer of any of the following securities issued by a corporation, partnership, limited liability company, or real estate investment trust, as the case may be: note, stock, bond, debenture, evidence of indebtedness, partnership interest, share of beneficial interest in a real estate investment trust, a warrant or right to purchase or subscribe to any of the foregoing or a security convertible into any of the foregoing, shall be exempt from the securities, broker-dealer and agent registration requirements of the Act, provided the following conditions are met:

1. In connection with an offering pursuant to this section, there shall be no more than 35 purchasers in this Commonwealth during any period of 12 consecutive months;
2. In connection with an offering pursuant to this section, the issuer shall:
 - a. Deliver Form VA-1 and in certain prescribed circumstances, Part 2 of Form VA-1 or a disclosure document containing the information required by Form VA-1 and Part 2, if required, to each prospective purchaser prior to a sale to a purchaser; and
 - b. Sell securities only to purchasers, each of which the issuer shall, after reasonable inquiry, believe either:
 - (1) Has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and is able to bear the economic risks of the prospective investment; or
 - (2) Together with a purchaser representative or representatives, has sufficient knowledge and experience in financial and business

SECURITIES ACT REGULATIONS

matters to be capable of evaluating the merits and risks of the prospective investment, and that the purchaser is able to bear the economic risks of the prospective investment; and

3. No commission or similar remuneration is paid or given, directly or indirectly, for soliciting a prospective purchaser, or in connection with sales of securities in reliance on this section, unless paid to a broker-dealer and its agent who are registered under the Act and the securities are offered only to persons whose investing history demonstrates an ability to evaluate the merits and risks of the investment and who are capable of bearing the economic risks of the investment.

B. This exemption is not available with respect to an offering:

1. Pursuant to a registration statement or Regulation A (17 CFR 230.251-230.263) notification which has been filed under the Securities Act of 1933;
2. Pursuant to an exemption under Regulation D (17 CFR 230.505 or 17 CFR 230.506), which offering may be exempted in Virginia only by 21 VAC 5-40-30, Uniform Limited Offering Exemption;
3. If the amount of money to be raised from the offering exceeds ~~\$1,000,000~~ 2,000,000;
4. If the issuer has offered for sale or sold its securities which are of the same or a similar class as that to be offered for sale or sold under this section within 180 days prior to this offering or if the issuer offers for sale or sells its securities that are of the same or a similar class as those offered and sold under this section within 180 days after this offering; or
5. If the issuer does not have a its principal place of business in this Commonwealth.

SECURITIES ACT REGULATIONS

C. An exemption under this section is not available if the issuer, its directors, officers, partners, members, trustees or beneficial owners of 10% or more of a class of its voting securities, or its promoters or agents connected with it or a person offering or selling the securities for or on behalf of the issuer:

1. Has been convicted (or has pleaded nolo contendere) within five years prior to reliance on this section of a felony or a misdemeanor in connection with the purchase or sale of a security, or in connection with making a false filing with the ~~United States Securities and Exchange Commission~~ SEC or a state securities administrator or of a felony involving fraud or deceit, including but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or theft;
2. Is subject to an order, judgment or decree of a court of competent jurisdiction that temporarily or preliminarily restrains or enjoins, or is subject to an order, judgment or decree of a court of competent jurisdiction, entered within five years prior to reliance on this section, which permanently restrains or enjoins a person from engaging in or continuing a practice or conduct in connection with the purchase or sale of a security, or involving the making of a false filing with the ~~United States Securities and Exchange Commission~~ SEC or a state securities administrator;
3. Is subject to a United States Postal Service false representation order entered within five years prior to reliance on this section; or
4. Is subject to a state administrative order entered within five years prior to reliance on this section by a state securities administrator in which fraud or deceit was found.

SECURITIES ACT REGULATIONS

D. The issuer shall file with the ~~State Corporation~~ Commission 15 days prior to the first sale in this Commonwealth in reliance on this section:

1. A copy of Form VA-1, including Part 2, if applicable or a disclosure document containing the information required by the Form;
2. An executed Consent to Service of Process on Form U2 appointing the Clerk of the State Corporation Commission as its agent for service of process;
3. An undertaking to promptly provide to the ~~State Corporation~~ Commission, upon request, additional information as the ~~State Corporation~~ Commission may require; and
4. A nonrefundable filing fee of \$250.

E. The issuer shall, within 30 days after the completion of the offering, file with the Commission a report of sales indicating the number of purchasers in this Commonwealth, a description of the securities sold to such purchasers, and the total dollar amount raised.

~~EF.~~ This section does not exempt persons or transactions from the anti-fraud provisions of the Act.

~~FG.~~ The ~~State Corporation~~ Commission may deny the exemption if it determines that a particular transaction or offering is not in the public interest.

~~GH.~~ For purposes of this section and § 13.1-514 B 7(b) of the Act, the following shall apply:

1. Neither the issuer nor persons acting on its behalf shall offer or sell the securities by form of general solicitation or advertising, including but not limited to, the following:
 - a. "Cold" calls" by telephone or other means, advertising, article, notice, or other communication published in a newspaper, newsletter, magazine,

SECURITIES ACT REGULATIONS

mass mailing, electronic media, or similar media or broadcast over television or radio; or

- b. Seminars or meetings whose attendees have been invited by general solicitation or general advertising.

- 2. Securities acquired in a transaction under this section shall not be resold without registration under or exemption from the ~~Virginia Securities~~ Act. The issuer or a person acting on its behalf shall exercise reasonable care to assure that the purchasers of the securities in an offering under this section are purchasing for investment and not with a view to distribution of the securities. Reasonable care shall include, but not be limited to, the following:

- a. Reasonable inquiry to determine whether the purchaser is acquiring the securities for himself or for other persons;
- b. Placement of a restrictive legend on the certificate or other document evidencing the securities. The legend shall be in the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE
(OR OTHER DOCUMENT) HAVE BEEN ISSUED
PURSUANT TO A CLAIM OF EXEMPTION FROM THE
REGISTRATION OR QUALIFICATION PROVISIONS OF
FEDERAL AND STATE SECURITIES LAWS AND SHALL
NOT BE SOLD OR TRANSFERRED WITHOUT
COMPLIANCE WITH THE REGISTRATION OR
QUALIFICATION PROVISIONS OF APPLICABLE
FEDERAL AND STATE SECURITIES LAWS OR
APPLICABLE EXEMPTIONS THEREFROM;

SECURITIES ACT REGULATIONS

- c. Issuance of stop-transfer instructions to the issuer's transfer agent with respect to the securities, or, if the issuer transfers its own securities, notation in the appropriate records of the issuer; and
 - d. Obtaining from the purchaser a signed agreement that the securities will not be sold unless they are registered under the ~~Virginia Securities~~ Act or exempted from registration.
- 3. All sales that are part of the same offering under this section shall meet all the conditions of this section. Offers and sales that are made more than six months before the commencement of an offering under this section or are made more than six months after completion of an offering under this section will not be considered part of that offering, so long as during those six-month periods there are no offers or sales of securities by or on behalf of the issuer that are of the same or a similar class as those offered or sold under this section. If securities of the same or a similar class as those offered pursuant to this section are offered or sold less than six months before or after an offer or sale pursuant to this section, those offers to sell or sales, will be deemed to be "integrated" with the offering.
- ~~H~~I. In proceedings involving this section, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.
- ~~I~~J. The exemption authorized by this section shall be known and may be cited as the "Domestic Issuer Limited Transactional Exemption."

21 VAC 5-40-130. Calculation of the number of purchasers under § 13.1-514 B 7 b.

- A. For the purpose of calculating the number of purchasers in the Commonwealth under § 13.1-514 B 7 b of the Act, the following persons are excluded:

SECURITIES ACT REGULATIONS

1. A relative, spouse, or relative of the spouse of a purchaser, who has the same principal residence as the purchaser;
 2. A trust or estate in which a purchaser and any of the persons related to the purchaser as specified in subdivisions 1 or 3 of this subsection collectively are beneficial owners of more than 50 % of the interests, excluding contingent interests;
 3. A corporation, limited liability company, partnership, or other entity of which a purchaser and any of the persons related to the purchaser as specified in subdivisions 1 or 2 of this subsection collectively are beneficial owners of more than 50 % of the equity interests (excluding directors' qualifying shares); and
 4. A person who comes within one of the categories of an "accredited investor" in Rule 501(a) of Regulation D (17 CFR 230.501-230.508) adopted by the SEC under the Securities Act of 1933.
- B. A corporation, partnership, limited liability company, unincorporated association or trust is considered one purchaser unless it was organized to raise capital for the issuer.
- C. If a purchaser that is a corporation, partnership, limited liability company, unincorporated association or trust was organized to raise capital for the issuer and is not an "accredited investor" under Rule 501(a)(8) of Regulation D (17 CFR 230.501 through 230.508), then each beneficial owner of an equity interest in the corporation, partnership, limited liability company, unincorporated association or trust is considered a separate purchaser.
- D. A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 is considered one purchaser, if the plan's trustee makes all investment decisions for the plan.

SECURITIES ACT REGULATIONS

21 VAC 5-40-140. Accredited investor exemption.

- A. In accordance with § 13.1-514 B 19 of the Act, any offer or sale of a security by an issuer in a transaction that meets the requirements of this section is exempt from the securities, broker-dealer and agent registration requirements of the Act.
- B. Sales of securities shall be made only to persons who are or the issuer reasonably believes are “accredited investors,” as that term is defined in 17 CFR 230.501(a), and

 - 1. Have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and are able to bear the economic risks of the prospective investment; or
 - 2. Together with a purchaser representative or representatives, have sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the prospective investment, and are able to bear the economic risks of the prospective investment.
- C. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- D. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under §§ 13.1-508 through 13.1-510 of the Act or to an accredited investor pursuant to an exemption available under the Act.

SECURITIES ACT REGULATIONS

- E. 1. The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter:
- a. Within the last five years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the SEC;
 - b. Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;
 - c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - d. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
2. Subdivision 1 shall not apply if:
- a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order,

SECURITIES ACT REGULATIONS

judgment or decree creating the disqualification was entered against such party;

b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this section.

F. 1. A general announcement of the proposed offering may be made by any means.

2. The general announcement shall include only the following information, unless additional information is specifically permitted by the Commission:

a. The name, address and telephone number of the issuer of the securities;

b. The name, a brief description and price (if known) of any security to be issued;

c. A description of the business of the issuer in 25 words or less;

d. The type, number and aggregate amount of securities being offered;

e. The name, address and telephone number of the person to contact for additional information; and

f. A statement that:

(1) sales will only be made to accredited investors;

(2) no money or other consideration is being solicited or will be accepted by way of this general announcement; and

SECURITIES ACT REGULATIONS

- (3) the securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold pursuant to an exemption from registration.

G. The issuer, in connection with an offer, may provide information in addition to the general announcement under subsection F, if such information:

1. Is delivered through an electronic database that is restricted to persons who have been pre-qualified as accredited investors; or
2. Is delivered if the issuer reasonably believes that the prospective purchaser is an accredited investor.

H. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

I. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this section.

J. The issuer shall file with the Commission no later than 15 days after the first sale in this Commonwealth from an offering being made in reliance upon this exemption:

1. A notice on the Model Accredited Investor Exemption Uniform Notice of Transaction form (see CCH NASAA Reports ¶362).
2. An executed consent of service of process appointing the Clerk of the Commission as its agent for purpose of service of process, unless a currently effective consent to service of process is on file with the Commission.
3. A copy of the general announcement.
4. A nonrefundable filing fee of \$250.

SECURITIES ACT REGULATIONS

21 VAC 5-40-150. Employee benefit plans; eligible participants.

The term "employee" as referred to in § 13.1-514 A 10 of the Act shall include all directors of the issuer regardless of whether the director is employed by the issuer. This exemption shall not apply to transfers of securities to individuals who are appointed directors for the purpose of avoiding registration under the Act.

21 VAC 5-80-30. Renewals.

- A. To renew its registration, an investment advisor will be billed by the ~~NASAA/NASD Central Registration Depository system~~ Division of Securities and Retail Franchising or any other entity designated by the Commission the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as of course upon payment of the proper fee together with any surety bond that the Commission may require pursuant to 21 VAC 5-80-180 B unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.
- B. To renew its notice filing a federal covered advisor will be billed by the ~~NASAA/NASD Central Registration Depository~~ Division of Securities and Retail Franchising or any other entity designated by the Commission the statutory fee of \$200 prior to the annual expiration date. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

Notwithstanding the exclusion provided by subdivision (vi) of § 13.1-501 of the Act in the definition of "investment advisor," for the period ending three years from October 11, 1996, the Commission may require the registration as an investment advisor of any federal covered advisor who fails or refuses to pay a fee required by this rule; provided that a delay in payment or an underpayment of a fee that is remedied within fifteen days

SECURITIES ACT REGULATIONS

after receipt of notice from the Commission shall not constitute a failure or refusal to pay the fee.

21 VAC 5-80-60. Investment advisor merger or consolidation.

In any merger or consolidation of an investment advisor or federal covered advisor a new application for registration or notice filing together with the proper fee must be filed with the Commission at its Division of Securities and Retail Franchising.

For each investment advisor representative of the new or surviving entity who will transact business in this Commonwealth, an application for registration together with the proper fee or fees must also be filed ~~on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system~~ with the Commission at its Division of Securities and Retail Franchising or any other entity designated by the Commission and in full compliance with the forms prescribed by the Commission. The foregoing filing requirement applies to each investment advisor representative who has a place of business located in the Commonwealth and who is connected with a federal covered advisor that is the new or surviving entity to the merger or consolidation.

21 VAC 5-80-70. Application for registration as an investment advisor representative.

- A. Application for registration as an investment advisor representative shall be filed ~~on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system~~ with the Commission at its Division of Securities and Retail Franchising or any other entity designated by the Commission and in full compliance with forms prescribed by the Commission. The application shall include all information required by such forms.

SECURITIES ACT REGULATIONS

- B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:
1. Form U-4.
 2. The statutory fee in the amount of \$30. The check must be made payable to the NASD-Treasurer of Virginia.
 3. [Provide evidence Evidence] of [obtaining a minimum] passing [grade of 70% on: (i)] the Uniform Investment Adviser Law Examination, Series 65; [(ii)] the Uniform Combined State Law Examination, Series 66 [and the General Securities Representative Examination, Series 7]; or [on (iii)] a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 - ~~34.~~ Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-80-90. Renewals.

To renew the registration(s) of its investment advisor representative(s), an investment advisor or federal covered advisor will be billed by the ~~NASAA/NASD Central Registration Depository system~~ Division of Securities and Retail Franchising or any other entity designated by the

SECURITIES ACT REGULATIONS

Commission the statutory fee of \$30 per investment advisor representative. A renewal of registration(s) shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

21 VAC 5-80-100. Updates and amendments.

An investment advisor representative shall amend or update Form U-4 as required by the "Amendment Filings" provisions set forth under "How to Use Form U-4." All filings shall be made with the ~~NASAA/NASD Central Registration Depository system~~ Division of Securities and Retail Franchising or any other entity designated by the Commission.

21 VAC 5-80-110. Termination of registration.

- A. When an investment advisor representative terminates a connection with an investment advisor, or an investment advisor terminates connection with an investment advisor representative, the investment advisor shall file with the ~~NASAA/NASD Central Registration Depository system~~ Division of Securities and Retail Franchising or any other entity designated by the Commission notice of such termination on Form U-5 within 30 calendar days of the date of termination.
- B. When an investment advisor representative terminates a connection with a federal covered advisor, the investment advisor representative shall file with the ~~NASAA/NASD Central Registration Depository system~~ Division of Securities and Retail Franchising or any other entity designated by the Commission notice of such termination on Form U-5 within 30 calendar days of the date of termination.

21 VAC 5-80-130. Examination/qualification.

- A. An individual applying for registration as an investment advisor representative ~~on or after July 1, 1989,~~ shall be required to provide evidence of passing: (i) the Uniform Investment

SECURITIES ACT REGULATIONS

Adviser Law Examination, Series 65; or (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates ~~with a minimum grade of 70 %.~~

B. Any individual who is currently registered as an investment advisor or investment advisor representative in any state jurisdiction shall not be required to satisfy the examination requirements for continued registration, except that the Commission may require additional examinations for any individual found to have violated any federal or state securities laws.

Any individual who has not been registered in any state jurisdiction for a period of two years shall be required to comply with the examination requirements of this section.

C. The examination requirements shall not apply to an individual who currently holds one of the following professional designations:

1. Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;
5. Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America; or

SECURITIES ACT REGULATIONS

6. Such other professional designation, after reasonable notice and subject to review by the Commission, as the Director of the Division of Securities and Retail Franchising designates.
- ~~BD.~~ In lieu of meeting the examination requirement described in subsection A of this section, an applicant who meets all the qualifications set forth below may file with the Commission at its Division of Securities and Retail Franchising an executed Affidavit for Waiver of Examination (Form S.A.3).
1. No more than one other individual connected with the applicant's investment advisor is utilizing the waiver at the time the applicant files Form S.A.3.
 2. The applicant is, and has been for at least the five years immediately preceding the date on which the application for registration is filed, actively engaged in the investment advisory business.
 3. The applicant has been for at least the two years immediately preceding the date on which the application is filed the president, chief executive officer or chairman of the board of directors of an investment advisor organized in corporate form or the managing partner, member, trustee or similar functionary of an investment advisor organized in noncorporate form.
 4. The investment ~~advisor(s)~~ advisor or advisors referred to in subdivision 3 has been actively engaged in the investment advisory business and during the applicant's tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary had at least \$40 million under management.
 5. The applicant verifies that he has read and is familiar with the investment advisor and investment advisor representative provisions of the Act and the provisions of Parts I through V of this chapter.

SECURITIES ACT REGULATIONS

6. The applicant verifies that none of the questions in Item 22 (disciplinary history) on his Form U-4 have been, or need be, answered in the affirmative.

21 VAC 5-80-160. Recordkeeping requirements for investment advisors.

- A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. ~~Such~~The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where

SECURITIES ACT REGULATIONS

appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.
5. All bills or statements (or copies ~~thereof of~~), paid or unpaid, relating to the business ~~of the~~ as an investment advisor ~~as such~~.
6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21 VAC 5-80-180, and internal audit working papers relating to the ~~business of such investment advisor~~ advisor's business as an investment advisor.
7. Originals of all written communications received and copies of all written communications sent by such investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, and (iii) the placing or execution of any order to purchase or sell any security; provided, however, (a) that the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) that if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the

SECURITIES ACT REGULATIONS

investment advisor shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts ~~in~~ which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.
9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.
10. All written agreements (or copies thereof) entered into by the investment advisor with any client ~~or otherwise relating to the business of such investment advisor as such,~~ and all other written agreements otherwise related to the investment advisor's business as an investment advisor.
- ~~11. a. A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment advisor circulates or distributes, directly or indirectly, to 10 or more persons (other than investment advisory clients or persons connected with such investment advisor), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment advisor indicating the reasons therefor.~~
 - ~~b. All of their advertisements and all records, worksheets, and calculations necessary to form the basis for performance data in their advertisements.~~
11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by

SECURITIES ACT REGULATIONS

electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment ~~advisor~~ advisory representative of such investment advisor has, or by reason of ~~such~~ any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment ~~advisor~~ advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment ~~advisor~~ advisory representative has any direct or indirect beneficial ownership in the

SECURITIES ACT REGULATIONS

security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12 the following definitions will apply.

The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

- (1) any person in a control relationship to the investment adviser,
- (2) any affiliated person of a controlling person, and
- (3) any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control such company.

- b.c An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if ~~he~~ the

SECURITIES ACT REGULATIONS

investment advisor establishes that ~~he~~ it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising ~~registered investment companies or other~~ investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment ~~advisor~~ advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment ~~advisor~~ advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment ~~advisor~~ advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall

SECURITIES ACT REGULATIONS

be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

- b. An investment advisor is "primarily engaged in a business or businesses other than advising ~~registered investment companies or other~~ investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

- c. For purposes of this subdivision 13 the following definitions will apply.
The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of such the recommendations or of the information concerning the recommendations:

- (1) Any person in a control relationship to the investment advisor,

SECURITIES ACT REGULATIONS

(2) Any affiliated person of a controlling person, and

(3) Any affiliated person of an affiliated person.

ed. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision ~~thereof~~, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21 VAC 5-80-190 and a record of the dates that each written statement, and each amendment or revision ~~thereof~~, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;

b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and,

c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be

SECURITIES ACT REGULATIONS

considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); provided, that with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

- ~~15~~ 17. [Every investment advisor subject to 21 VAC 5-80-170 shall keep in each business office written procedures which shall include, but not be limited to, the duties imposed under 21 VAC 5-80-170. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.]

SECURITIES ACT REGULATIONS

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
 19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.
 20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.
- B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A above shall also include:
1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for [~~such~~ such] accounts and all other debits and credits to [~~such~~ such] accounts.
 2. A separate ledger account for each [~~such~~ such] client showing all purchases, sales, receipts and deliveries of securities, the date and price of each [~~such~~ such] purchase and sale, and all debits and credits.
 3. Copies of confirmations of all transactions effected by or for the account of any [~~such~~ such] client.
 4. A record for each security in which any [~~such~~ such] client has a position, which record shall show the name of each [~~such~~ such] client having any interest in each

SECURITIES ACT REGULATIONS

security, the amount or interest of each [~~such~~ such] client, and the location of each [~~such~~ such] security.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each [~~such~~ such] client the securities purchased and sold, and the date, amount and price of each [~~such~~ such] purchase and sale.
2. For each security in which any [~~such~~ such] client has a current position, information from which the investment advisor can promptly furnish the name of each [~~such~~ such] client, and the current amount or interest of [~~such~~ the such] client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom such investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A to subdivision C [~~2~~ 1], inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the

SECURITIES ACT REGULATIONS

last entry was made on ~~such~~ record, the first two years ~~of such period~~ in the principal office of the investment advisor.

2. Partnership articles and any amendments ~~thereto~~, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.
3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
4. Books and records required to be made under the provisions of subdivisions A [11 and A 16 17 through 20, inclusive,] of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, [the first two years in the principal office of the investment advisor,] from the end of the fiscal year during which the [investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less].

SECURITIES ACT REGULATIONS

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, B and C inclusive of this subdivision, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.
- F. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where such books and records will be maintained during such period.
- ~~G. All books, records or other documents required to be maintained and preserved under this section may be stored on microfilm, microfiche, or an electronic data processing system or similar system utilizing an internal memory device provided a printed copy of any such record is immediately accessible.~~
- G. 1. The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in

SECURITIES ACT REGULATIONS

subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

- a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,
- b. Be ready at all times to promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request,
- c. Store separately from the original one other copy of the film or computer storage medium for the time required,
- d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and
- e. With respect to records stored on photographic film, at all times have available, for the Commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

- 2. Pursuant to subdivision 1 of this subsection an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

SECURITIES ACT REGULATIONS

- H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.
- I. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- J. Every investment advisor registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub.L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

[21 VAC 5-80-180. Requirements for surety bonds and financial reporting.

- A. Investment advisors required to provide a balance sheet pursuant to Part II, Item 14 of Form ADV must demonstrate a net worth in excess of \$25,000. In the case of an investment advisor that is registered in the state in which it maintains its principal place of business, its balance sheet must demonstrate that it is in compliance with the state's net worth or net capital requirements (as the case may be).
- B. Investment advisors who maintain their principal place of business in the Commonwealth of Virginia and are subject to subsection A above, whose net worth

SECURITIES ACT REGULATIONS

drops below \$25,001, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth in excess of \$25,000 or obtain a surety bond in the penalty amount of \$25,000. The surety bond form (~~see 21 VAC 5-85-10~~) must be utilized. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:

1. A trial balance of all ledger accounts.
 2. A computation of net worth.
 3. A statement of all client funds or securities which are not segregated.
 4. A computation of the aggregate amount of client ledger debit balances.
 5. A statement as to the number of client accounts.
- C. An investment advisor registered in the state in which it maintains its principal place of business and subject to subsection A above whose net worth or net capital (as the case may be) drops below the state's requirement, must notify the Division of Securities and Retail Franchising within 24 hours of initial awareness of the discrepancy and immediately take action to establish a net worth or net capital that is in compliance with the state's requirement. Additionally, within 24 hours after transmitting such notice, the investment advisor shall file a report with the Division of Securities and Retail Franchising of its financial condition, including the following:
1. A trial balance of all ledger accounts.
 2. A computation of net worth or net capital.
 3. A statement of all client funds or securities which are not segregated.

SECURITIES ACT REGULATIONS

4. A computation of the aggregate amount of client ledger debit balances.
5. A statement as to the number of client accounts.]

21 VAC 5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed

SECURITIES ACT REGULATIONS

pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

SECURITIES ACT REGULATIONS

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.
11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
 - a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.
12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.
13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-1).
14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.
15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's

SECURITIES ACT REGULATIONS

action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.

16. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. ~~[Failure to disclose in a timely manner (so that clients and prospective clients may take steps to protect their interest), advisory services and relationships, or proposed advisory services and relationships, which may be affected by year 2000 computer or equipment problems, if the advisor has not substantially addressed these problems, or is uncertain of its ability to resolve these problems]~~
Fail to make a disclosure in a timely manner to clients or perspective clients, that the investment advisor has not substantially addressed year 2000 computer or equipment problems, or is substantially uncertain of its ability to resolve these problems.]

- B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

SECURITIES ACT REGULATIONS

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

SECURITIES ACT REGULATIONS

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.
11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

SECURITIES ACT REGULATIONS

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.
12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.
13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.
14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.
15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.
16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants

SECURITIES ACT REGULATIONS

discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

- C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent not permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).
- D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

21 VAC 5-80-210. Exclusions from definition of "investment advisor" and "federal covered advisor."

- A. The terms "investment advisor" and "federal covered advisor" do not include any person engaged in the investment advisory business whose only client in this Commonwealth is one (or more) of the following:
 - 1. An investment company as defined in the Investment Company Act of 1940.
 - 2. An insurance company licensed to transact insurance business in this Commonwealth.
 - 3. A bank, a bank holding company as defined in the Bank Holding Company Act of 1956, a trust subsidiary organized under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a savings institution, a credit union, or a trust company if the entity is either (i) authorized or licensed to transact such business in this Commonwealth or (ii) organized under the laws of the United States.

SECURITIES ACT REGULATIONS

4. A broker-dealer so registered under the Act and under the Securities Exchange Act of 1934.
 5. An employee benefit plan with assets of not less than \$5,000,000.
 6. A governmental agency or instrumentality.
 7. A corporation, general partnership, limited partnership, limited liability company, trust or other legal organization that (i) has assets of not less than \$5,000,000 and (ii) receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members or beneficiaries, provided the investment advisor or federal covered advisor is exempt from registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 or by any rule or regulation promulgated by the SEC under that section.
- B. Any investment advisor or federal covered advisor who (i) does not have a place of business located within this Commonwealth and (ii) during the preceding 12 month period has had fewer than six clients who are residents of this Commonwealth other than those listed in subsection A of this section is excluded from the registration and notice filing requirements of the Act.

21 VAC 5-80-220. Performance based fees.

- A. In accordance with § 13.1-503 C of the Act, an investment advisor may enter into, extend, or renew any investment advisory contract to provide for compensation to the investment advisor on the basis of a share of the capital gains upon, or the capital appreciation of, the funds or any portion of the funds of a client, provided that the following conditions of this section are satisfied.
- B. Nature of the client:

SECURITIES ACT REGULATIONS

1.
 - a. The client entering into the contract subject to this section must be a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection [F E] of this section, who immediately after entering into the contract has at least ~~\$500,000~~750,000 under the management of the investment advisor; or
 - b. A person who the registered investment advisor (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering into the contract, is a natural person or a company, as defined in subdivision 2 of this subsection and in the definition of "company" in subsection [F E] of this section, whose net worth at the time the contract is entered into exceeds ~~\$1,000,000~~1,500,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)
 2. The term "company" as used in subdivision 1 of this subsection does not include:
 - a. A private investment company, as defined in subsection [F E] of this section;
 - b. An investment company registered under the Investment Company Act of 1940; or
 - c. A business development company, as defined in § 202 (a) (22) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(22))unless each of the equity owners (other than the investment advisor entering into a contract under this section) of any such company identified in this subdivision 2, is a natural person or company described in this subsection B.

SECURITIES ACT REGULATIONS

~~C.~~ ~~Compensation formula. The compensation paid to the advisor under this section with respect to the performance of any securities over a given period shall be based on a formula which:~~

- ~~1. Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;~~
- ~~2. Includes, in the case of securities for which market quotations are not readily available:~~
 - ~~a. The realized capital losses of the securities over the period and~~
 - ~~b. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and~~
- ~~3. Provides that any compensation paid to the advisor under this section is based on the gains less the losses (computed in accordance with subdivisions 1 and 2 of this subsection) in the client's account for a period of not less than one year.~~

DC. Disclosure. In addition to the disclosure requirements of Form ADV, the advisor shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract permitted by this section, all material information concerning the proposed advisory arrangement including the following:

1. That the fee arrangement may create an incentive for the advisor to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;
2. Where relevant, that the advisor may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

SECURITIES ACT REGULATIONS

3. The time period which will be used to measure investment performance throughout the term of the contract and its significance in the computation of the fee;
 4. The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the advisor believes the index is appropriate; and
 5. Where an advisor's compensation is based on the unrealized appreciation of securities for which market quotations are not readily available, how such securities will be valued and the extent to which the valuation will be independently determined.
- ED. Arms-Length Contract. The investment advisor (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in subsection ~~F~~E of this section, the person, representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in subsection ~~F~~E of this section.
- ~~FE~~. Definitions. For the purpose of this section:
- The term “*affiliated person*” has the same meaning as in § 2 (a) (3) of the Investment Company Act of 1940 (15 USC § 80a-2(a)(3)).

SECURITIES ACT REGULATIONS

The term "*client's independent agent*" means any person agreeing to act as the client's agent in connection with the contract other than:

1. The investment advisor acting in reliance upon this section, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor, or an interested person of the investment advisor as defined in this subsection;
2. A person who receives, directly or indirectly, any compensation in connection with the contract from the investment advisor, an affiliated person of the investment advisor, an affiliated person of an affiliated person of the investment advisor or an interested person of the investment advisor as defined in this subsection; or
3. A person with any material relationship between himself (or an affiliated person of such person) and the investment advisor (or an affiliated person of the investment advisor) that exists, or has existed at any time during the previous two years.

The term "*company*" has the same meaning as in § 202 (a) (5) of the Investment Advisers Act of 1940 (15 USC § 80b-2(a)(5)).

The term "*interested person*" as used in the definition of "client's independent agent" of this section means:

1. Any member of the immediate family of any natural person who is an affiliated person of the investment advisor;
2. Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment advisor or by a

SECURITIES ACT REGULATIONS

controlling person of the investment advisor if the beneficial or legal interest of the person in any security issued by the investment advisor or by a controlling person of the investment advisor:

- a. Exceeds one tenth of one percent of any class of outstanding securities of the investment advisor or a controlling person of the investment advisor; or
 - b. Exceeds 5.0% of the total assets of the person (seeking to act as the client's independent agent); or
3. Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment advisor.

The term "*private investment company*" means a company which would be defined as an investment company under § 3 (a) of the Investment Company Act of 1940 (15 USC § 80a-3(a)) but for the exception provided from that definition by § 3 (c) (1) of such Act.

The term "*securities for which market quotations are readily available*" in subsection C of this section has the same meaning as in Rule 2a-4 (a) (1) under the Investment Company Act of 1940 (17 CFR 270.2a-4 (a) (1)) .

The term "*securities for which market quotations are not readily available*" in subsection C of this section means securities not described in the above paragraph.

[CHAPTER 85

Forms

~~21 VAC 5-85-10. ————— Adopted securities forms.~~

~~The Commission adopts for use under the Act the forms contained in the Appendix (not included in Virginia Administrative Code) and listed below.]~~

SECURITIES ACT REGULATIONS

Broker-Dealer and Agent Forms

Form BD - Uniform Application for Broker-Dealer Registration (2/98).

Agreement for Inspection of Records (rev. 7/98).

Form S.A.11 - Broker-Dealer's Surety Bond (rev. ~~1982~~ 7/99).

Form S.A.2 - Application for Renewal of a Broker-Dealer's Registration (rev. ~~11/96~~ 7/99).

Form S.D.4 - Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Investment Advisor and Investment Advisor Representative Forms

Form ADV - Uniform Application for Registration of Investment Advisors (rev. 7/97).

Agreement for Inspection of Records (rev. 7/98).

Surety Bond Form (~~1987~~ rev. 7/99).

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Form S.A.3 - Affidavit for Waiver of Examination (rev. ~~11/96~~ 7/99).

Form S.A.14 - Consent to Service of Process for Notice Filing as a Federal Covered Advisor (7/97).

Form S.A. 15 - Investment Advisor Representative Multiple Employment Agreement (7/98).

SECURITIES ACT REGULATIONS

Securities Registration [and Notice Filing] Forms

Form U-1 Uniform Application to Register Securities (7/81).

Form U-2 - Uniform Consent to Service of Process (7/81).

Form U-2a - Uniform Form of Corporate Resolution (~~7/81~~ rev. 7/99).

Form S.A.4 - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5 - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6 - Registration by Notification - Pursuant to 21 VAC 5-30-50 Non-Issuer Distribution
“Secondary Trading” (1989).

Form S.A.8 - Registration by Qualification (7/91).

Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust) (~~7/90~~ rev. 7/99).

Form S.A.12 - Escrow Agreement (1971).

Form S.A.13 - Impounding Agreement (~~7/9/68~~ rev. 7/99).

Form VA-1 - Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).

21 VAC 5-100-10. Rule governing disclosure of confidential information.

- A. This rule governs the disclosure by the Commission of information or documents obtained or prepared by any member, subordinate or employee of the Commission in the course of any examination or investigation conducted pursuant to the provisions of Securities Act (§ 13.1-501 et seq. of the Code of Virginia), ~~the Take-Over Bid Disclosure Act (§ 13.1-528 et seq. of the Code of Virginia [Repealed.]), or the Retail Franchising Act (§ 13.1-557 et seq. of the Code of Virginia)~~ (hereinafter “data”). It is designed to implement the provisions of §§ 13.1-518, ~~13.1-534 [Repealed.]~~ and 13.1-567 that permit disclosure of ~~such data~~ information to governmental and quasi-governmental entities approved by rule of the Commission.

SECURITIES ACT REGULATIONS

- B. The Director ~~or the Deputy Director~~ of the Division of Securities and Retail Franchising or his designee is hereby authorized to disclose ~~data~~ information to the entities enumerated in subsections ~~F, G, and H, below~~ D, E and F of this section. Disclosure shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.
- ~~C. Disclosure of data shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law.~~
- ~~D. As a condition precedent to disclosure of data, the Director or Deputy Director shall obtain in writing from the receiving entity an undertaking that it will exercise reasonable measures to preserve the confidential nature of the data.~~
- ~~E.C.~~ Disclosure may be made only under the following circumstances:
1. In response to an entity's request for ~~data~~ information relating to a specific subject or person.
 2. By disseminating to an entity ~~data~~ information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.
 3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, ~~take over bid~~, retail franchising or related laws.

SECURITIES ACT REGULATIONS

4. To the extent necessary for participation in coordinated examinations or investigations.

~~F.D.~~ The ~~Director or Deputy Director may disclose data under the conditions set forth in subsections C, D, and E, above, to the~~ following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.
2. Commodity Futures Trading Commission.
3. Congress of the United States, including either House, or any committee or subcommittee thereof.
4. Department of Defense.
5. Department of Housing & Urban Development.
6. Department of Justice.
7. Department of Treasury.
8. Federal Deposit Insurance Corporation.
9. ~~Federal Savings & Loan Insurance Corporation~~ Office of Thrift Supervision.
10. Federal Trade Commission.
11. Postal Service.
12. Securities & Exchange Commission.
13. Comptroller of the Currency.
14. Federal Bureau of Investigation.
15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.

SECURITIES ACT REGULATIONS

~~G.E. The Director or Deputy Director may disclose data under the conditions set forth in subsections C, D, and E, above, to the~~ The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, ~~including their~~ state legislative bodies ~~as well as their~~ and state and local law enforcement entities involved in the detection, investigation or prosecution of violations of law.
2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, ~~including the~~ and law enforcement entities within such countries.

~~H.F. The Director or Deputy Director may disclose data under the conditions set forth in subsections C, D, and E, above, to the~~ The following are approved quasi-governmental entities:

1. American Stock Exchange.
2. Chicago Board Options Exchange.
3. Midwest Stock Exchange.
4. Municipal Securities Rulemaking Board.
5. National Association of Attorneys General.
6. National Association of Securities Dealers, Inc.
7. New York Stock Exchange.
8. North American Securities Administrators Association, Inc.
9. Pacific Stock Exchange.
10. Philadelphia Stock Exchange.

SECURITIES ACT REGULATIONS

11. Securities Investor Protection Corporation.

[12. National White Collar Crime Center.

13. National Association of Securities Dealers Regulation, Inc.

14. Any other quasi-governmental entity which demonstrates a need for access to confidential information.]

[21 VAC 5-120-30. Classification of regulatory standards.

Regulations are regulatory standards adopted and promulgated and shall be considered the highest level of policy applied by the State Corporation Commission.

Forms are ~~regulatory standards prescribed or~~ adopted for the purpose of implementing the Act ~~by prescribing initial basic requirements for completing various applications and reports filed with the State Corporation Commission. The forms required by the State Corporation Commission are set forth in 21 VAC 5-120-110 and have the same force and effect as regulations~~ When so prescribed or adopted, use of the forms is mandatory.

Statements made orally or in writing by personnel of the division or other State Corporation Commission personnel in response to inquiries or otherwise and not specifically identified and promulgated as regulations shall not be considered regulatory standards of the State Corporation Commission and shall not be considered binding upon the State Corporation Commission in connection with specific decisions undertaken by the State Corporation Commission thereafter. The State Corporation Commission may refuse to answer any question based upon a hypothetical situation.]

[PART IV.

~~FORMS FOR TRADEMARKS AND SERVICE MARKS.~~

~~21 VAC 5-120-110. Trademark and service mark forms.~~

~~—The State Corporation Commission adopts for use under the Act the forms listed below:~~

SECURITIES ACT REGULATIONS

~~Form TM 1 Application for Registration of a Trademark or Service Mark (eff. 7/98).~~

~~Form TM 2 Application for Renewal of Registration of a Trademark or Service Mark (eff. 7/98).~~

~~Form TM 3 Certificate of Name Change of an Applicant or Registrant (eff. 7/98).]~~

SECURITIES ACT REGULATIONS

S.A.2
(Rev. 11/96 7/99)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

APPLICATION FOR RENEWAL OF A BROKER-DEALER'S REGISTRATION

1. Name of Applicant:_____.
2. Principal Address of Applicant:_____.
3. Attach the most current audited financial statements of the broker-dealer prepared and certified by an independent certified public accountant (if they have not been previously submitted). If the statements are not dated within 120 days of the filing of the application, financial statements attested to by an officer of the firm or the latest quarterly FOCUS report must also be submitted. The financial statements or FOCUS report must be dated within the 120 day period. The financial statements should include all reports, schedules and statements defined in 21 VAC 5-20-30 B 2.
4. During the last twelve months, has there been any change in the organization or policy of the applicant, including form of organization, officers, partners, managers, business address, changes which would cause affirmative answers to any part of question 10 of form BD, etc.? _____. If we have not had prior notification of such change(s), attach appropriate amended page(s) to form BD.
5. The application must be accompanied by a fee of \$200 payable to the Treasurer of Virginia. If the renewal is not granted, the fee is not refundable.

_____ Broker-Dealer	_____ Date
By _____	(Signature) _____ Title

COMMONWEALTH OF VIRGINIA

_____ OF _____, to-wit:

_____, being first duly sworn, deposes
and says:

I have been authorized by the applicant to execute and file the foregoing application. I have read the application and exhibits filed with it, and the facts stated in the application and in the exhibits are true to the best of my knowledge, information and belief.

Affiant

Subscribed and sworn to before me this

_____ day of _____ 19 _____.

SECURITIES ACT REGULATIONS

Notary Public

My commission expires: _____ (SEAL)

NOTE: NON-NASD MEMBER FIRMS SHOULD ALSO ATTACH TO THIS APPLICATION S.D.4.A AND, IF APPLICABLE, S.D.4.B AND S.D.4.C. A \$30 FEE FOR EACH AGENT LISTED ON FORM S.D.4.A AND A \$200 RENEWAL FEE FOR THE FIRM SHOULD BE INCORPORATED INTO ONE CHECK, PAYABLE TO THE TREASURER OF VIRGINIA.

SECURITIES ACT REGULATIONS

S.A.3
(Rev. 11/96 7/99)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

AFFIDAVIT FOR WAIVER OF EXAMINATION

Pursuant to 21 VAC 5-80-130 B

State of _____

County/City of _____, to wit:

The undersigned, having been duly sworn, deposes and says:

1. My name is _____.
2. My CRD number is _____.
3. The name of the investment advisory with which I am, or will be connected is _____
_____.
4. The CRD number of this investment advisor is _____.
5. I am, and have been for at least the five years immediately preceding the date on which my application for registration was filed, actively engaged in the investment advisory business.
6. I have been for at least the two years immediately preceding the date on which my application for registration was filed the president, chief executive, chairman of the board of directors, or managing partner, member, trustee or similar functionary, of an investment advisor actively engaged in the investment advisory business.
7. The investment advisor(s) referred to in subdivision 6, above, have, or had during my tenure as president, chief executive officer, chairman of the board of directors, or managing partner, member, trustee or similar functionary, at least forty million dollars under management.
8. I have read and am familiar with the investment advisor and investment advisor representative provisions of the Virginia Securities Act (§ 13.1 501 et seq. of the Code of Virginia) and provisions of 21 VAC 5-80-10 - 240 of this Commission's Securities Act Rules.
9. None of the questions in Item 22 (disciplinary history) on my Form U-4 have been, or need be, answered in the affirmative.

Signature of the Affiant

Subscribed and sworn to before me, a Notary Public, this _____ day of _____, ~~19~~_____.

(SEAL)

SECURITIES ACT REGULATIONS

Signature of the Notary Public

My commission expires: _____

INSTRUCTIONS

This form must be filed with the Division of Securities and Retail Franchising. Form U-4 (or any amendment) and any required fee must be filed with the NASA/NASD Central Registration Depository system.

SECURITIES ACT REGULATIONS

S.A. 11
(Revised 1982 7/99)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

BROKER-DEALER'S SURETY BOND

_____ of _____ as principal, and
_____ a corporation organized and existing
under the laws of the State of _____, and authorized to write bonds
in the Commonwealth of Virginia, as Surety, are held and firmly bound unto the
COMMONWEALTH OF VIRGINIA in the penal sum of \$_____ for the payment of
which, well and truly to be made, we, and each of us, bind ourselves, our heirs, successors and
assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DATED this _____ day of _____, 19____.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

Whereas, the said Principal has applied to the State Corporation Commission of the
Commonwealth of Virginia for registration (or renewal of registration) as an broker-dealer
pursuant to the Securities Act (Chapter 5, Title 13.1, Code of Virginia (1950), as amended) and,
in accordance with §13.1-505 thereof, the State Corporation Commission has conditioned
registration (or renewal of registration) upon the Principal filing a surety bond;

Therefore, the conditions of this obligation are such that if the Principal, in connection
with his investment advisory business transacted in Virginia, discharges all obligations imposed
on him as an investment advisor registered under the Securities Act, accounts for all money and
securities coming into his hands for the use of his clients, fully performs all investment advisory
contracts to which he is a party, and satisfies all civil penalties provided in the Securities Act for
which said Principal may become liable, then this obligation shall be null and void; otherwise, to
remain in full force and effect;

Provided, this bond shall cover the acts of the Principal during the period of registration;
and in no event shall the Surety's aggregate liability hereunder for all losses exceed the penal sum
of \$_____.

Provided further, the Surety may be released from liability for future breaches of the
conditions of this bond only after thirty days have elapsed from the giving of written notice to the
Principal and to the State Corporation Commission of the Commonwealth of Virginia, of its
desire to be released.

(Principal)

(SEAL OF PRINCIPAL)

By _____

SECURITIES ACT REGULATIONS

(If Principal is Partnership
or Corporation)

Title_____

(SEAL OF SURETY)

(Surety)

By_____
(Officer or Attorney-in-Fact)

Countersigned by

(Name of Agency)

(Resident Virginia Agent)

Date_____

SECURITIES ACT REGULATIONS

S.A. 13 (~~7/9/58~~ 7/99)

STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

IMPOUNDING AGREEMENT

As a condition of the registration by qualification of the securities described hereafter:

The undersigned issuer agrees that the proceeds from the sale of such securities shall be delivered in escrow to _____ as depository until at least _____ of such securities have been sold and paid for.

The undersigned depository accepts the duties hereby imposed on it and agrees to hold said proceeds in trust until authorized in writing by the Division of Securities and Retail Franchising of the State Corporation Commission to disburse them.

If less than _____ of said securities have been sold within _____ months of the date of this agreement, the proceeds in escrow are to be returned to the subscribers who have paid for the securities.

The undersigned broker-dealers and agents of the issuer agree to remit immediately to the depository all proceeds without deduction of any fees, commissions or expenses.

In Witness Whereof, this agreement has been executed as of the _____ day of _____, 199__, by the issuer, by the depository, by each broker-dealer offering the securities and by each agent of the issuer offering the securities.

ISSUER

Name of Issuer (Type or Print)

President, Other Appropriate Officer or
General Partner and Title (Type or Print)

Signature of President, Other Appropriate Officer or General Partner

DEPOSITORY

Name of Virginia Depository

Bank Officer (Type or Print) and Title

Address of Virginia Depository
(Type or Print)

Signature of Bank Officer

BROKER/AGENT

Virginia Broker-Dealer (Type or Print)

President or Other Appropriate Officer and
Title (Type or Print)

Signature of President or Other Appropriate Officer

Virginia Broker-Dealer (Type or Print)

President or Other Appropriate Officer and
Title (Type or Print)

SECURITIES ACT REGULATIONS

Signature of President or Other Appropriate Officer

Agent of the Issuer (Type or Print)

Signature of Agent of the Issuer

S.A. 13

SPECIAL INSTRUCTIONS

In order to substantiate that the terms of the impounding agreement have been complied with the following documentation together with a request for authorization to disburse funds must be submitted to the State Corporation Commission's Division of Securities and Retail Franchising. Upon receipt of Items 1 and 2 below, the written authorization to disburse funds will be processed:

1. An affidavit from the issuer (its president or other appropriate officer) that the requisite percentage of the offering has been sold and paid for.
2. An affidavit from the depository (its president or other appropriate officer) setting forth the total aggregate sum being held by the depository pursuant to the terms of the impounding agreement.

SECURITIES ACT REGULATIONS

S.A. 10 (~~7/90~~ 7/99)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

REQUEST FOR REFUND AFFIDAVIT
(Unit Investment Trust)

State/Commonwealth of _____

County/City of _____, to wit:

1. Name of Trust _____
2. Address _____

3. Name of Sponsor (if applicable) _____
Address _____

4. Contact Person _____
5. Telephone Number (____) _____
6. Virginia Effective Date of the Trust's Registration Statement _____
7. Date Sales Concluded in Virginia _____
8. Amount of Fee which Accompanied Registration Statement \$ _____
9. Aggregate Purchase Price of the Units Sold in Virginia \$ _____
10. Aggregate Number of Units Sold in Virginia Pursuant to the Offering _____
11. Amount of Fee Due Based on Actual Sales in Virginia
(amount of item 9 X 0.0005; \$400 minimum) _____
12. Amount of Refund Due (subtract item 11 from item 8; if result is less
than \$25, no refund will be made) _____
13. Refund Check Should be sent to ____ Trust ____ Sponsor

Under penalty of perjury, I state that I have examined the foregoing information and that to the best of my knowledge, it is true, correct and complete.

Date _____, 19 ____

Name of Trust or Sponsor

Printed Name

By _____
Signature of Person Authorized to Sign on
Behalf of Trust or Sponsor

Subscribed and sworn to before me, a Notary Public, this ____ day of _____, 19____.

SECURITIES ACT REGULATIONS

Notary Public

My Commission expires: _____

(SEAL)

SECURITIES ACT REGULATIONS

Form U-2a (~~7/81~~ 7/99)

UNIFORM FORM OF CORPORATE RESOLUTION OF

(NAME OF CORPORATION)

RESOLVED, that it is desirable and in the best interest of this Corporation that its securities be qualified or registered for sale in the various states; that the President or any Vice President and the Secretary or an Assistant Secretary hereby are authorized to determine the states in which appropriate action shall be taken to qualify or register for sale all or such part of the securities of this Corporation as said officers may deem advisable; that said officers are hereby authorized to perform on behalf of this Corporation any and all such acts as they may deem necessary or advisable in order to comply with the applicable laws of any such states, and in connection therewith to execute and file all requisite papers and documents, including, but not limited to, applications, reports, surety bonds, irrevocable consents and appointments of attorneys for service of process; and the execution by such officers of any such paper or document or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefore from this Corporation and the approval and ratification by this Corporation of the papers and documents so executed and the action so taken.

CERTIFICATE

The undersigned hereby certifies that he is the _____ Secretary of _____ a corporation organized the existing under the laws of the State of _____; that the foregoing is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said corporation held on the _____ day of _____, 19____, at which meeting a quorum was at all time present and acting; that the passage of said resolution was in all respects legal; and that the said resolution is in full force and effect.

Date this _____ day of _____, 199____.

SECURITIES ACT REGULATIONS

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
DIVISION OF SECURITIES AND RETAIL FRANCHISING

INVESTMENT ADVISOR'S SURETY BOND

_____ of _____ as principal, and
_____ a corporation organized and existing
under the laws of the State of _____, and authorized to write bonds
in the Commonwealth of Virginia, as Surety, are held and firmly bound unto the
COMMONWEALTH OF VIRGINIA in the penal sum of \$_____ for the payment of
which, well and truly to be made, we, and each of us, bind ourselves, our heirs, successors and
assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED AND DATED this _____ day of _____, ~~19~~_____.

THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT:

Whereas, the said Principal has applied to the State Corporation Commission of the Commonwealth of Virginia for registration (or renewal of registration) as an investment advisor pursuant to the Securities Act (Chapter 5, Title 13.1, Code of Virginia (1950), as amended) and, in accordance with §13.1-505 thereof, the State Corporation Commission has conditioned registration (or renewal of registration) upon the Principal filing a surety bond;

Therefore, the conditions of this obligation are such that if the Principal, in connection with his investment advisory business transacted in Virginia, discharges all obligations imposed on him as an investment advisor registered under the Securities Act, accounts for all money and securities coming into his hands for the use of his clients, fully performs all investment advisory contracts to which he is a party, and satisfies all civil penalties provided in the Securities Act for which said Principal may become liable, then this obligation shall be null and void; otherwise, to remain in full force and effect;

Provided, this bond shall cover the acts of the Principal during the period of registration; and in no event shall the Surety's aggregate liability hereunder for all losses exceed the penal sum of \$_____.

Provided further, the Surety may be released from liability for future breaches of the conditions of this bond only after thirty days have elapsed from the giving of written notice to the Principal and to the State Corporation Commission of the Commonwealth of Virginia, of its desire to be released.

(Principal)

SECURITIES ACT REGULATIONS

(SEAL OF PRINCIPAL)

By_____

(If Principal is Partnership
or Corporation)

Title_____

(SEAL OF SURETY)

(Surety)

By_____

(Officer or Attorney-in-Fact)

Countersigned by

(Name of Agency)

(Resident Virginia Agent)

Date_____